

DATE: November 10, 2010

TO: Representative Mark Meadows and Representative Eileen Kowall

FROM: Mitch Bean *MB*

RE: Mandate Panel

As I consider the implications of appointing a Fiscal Agency Director as Chair of the proposed Local Government Mandates Panel, I have a number of concerns. I have outlined those concerns below.

- Serving on the Local Government Mandate Panel is not an appropriate role for the director of House Fiscal Agency. The judgments the Panel must make are legal, policy, and/or political judgments and should not be made by nonpartisan legislative staff.
  - The 8-member Mandate Panel is charged with determining whether legislation requires local units of government to provide a new or increased level of service; that is, whether the Legislature is complying with its constitutional responsibilities under Section 29, Article IX (part of the Headlee Amendment). The fiscal agency can provide useful technical information, but should not be involved in voting on such a determination.
  - The Panel is also charged with a comprehensive review of all existing laws and regulations that impose requirements on local units of government to determine whether they continue to be "necessary in terms of the cost/benefit to the public interest," and whether to repeal, rescind, or modify the requirements. Deciding if laws and regulations are "necessary" is the job of an elected legislature--not legislative staff or local government lobbyists.
- Putting the director of a fiscal agency on the Mandate Panel threatens to weaken the credibility of the agency and potentially usurps the authority of the Fiscal Agency Governing Board.
  - The Fiscal Agency is created in statute to be of service to the Appropriations Committee and other members and is governed by and answers to a bipartisan Governing Board made up of legislative leaders. The value of the agency lies in its ability to provide nonpartisan, neutral, timely, and sometimes confidential information to decision makers. For the agency to be effective, it needs the trust of members from both parties. It is essential in building and maintaining trust that the agencies not become policymakers and decision makers. The legislative proposal places the Fiscal Agency Director in a publicly controversial and adversarial role.
  - In its recommendations on creating a method of addressing state mandates, the Citizens Research Council rejected giving a role to the Auditor General because that officeholder is "a servant of the legislature." As a result, said the

CRC, the Auditor General would not be viewed as impartial. The same reasoning applies to the fiscal agency directors.

- Serving on (and chairing) the Mandate Panel is not an effective use of a fiscal agency director's time.
  - In the coming legislative session, more than half of the members of the House of Representatives will be new, with no previous experience. Legislators will be faced with a mammoth budget deficit and will need to make many difficult choices over revenue and spending. Helping legislators as they make these choices must be the focus of the Fiscal Agency Director and staff. The proposed Mandate Panel is charged, among numerous other things, with reviewing every piece of legislation before it is placed on third reading in the House and Senate and developing, when necessary, an accompanying appropriation bill. Convening a panel to review each bill that reaches second reading would be extraordinarily time-consuming task if taken seriously.
  - There is also the possibility that a new administration and/or new legislative leadership will want to introduce significant changes to the budget process. When this has occurred in the past, it has significantly increased the workload of the Fiscal Agency and of the Fiscal Agency Director.
- The Fiscal Agency does not have the resources to carry out the Mandate Panel functions. The fiscal agencies are working with reduced staffs and, given the effects of term limits, also with increased responsibilities. Adding even more responsibilities when resources are so strained is not feasible.
  - When it is determined that legislation contains increased necessary costs to local government, the Mandate Panel must develop a written estimate of those costs that is specific enough to form the basis for an appropriation bill. Currently, the fiscal agency has neither the wide range of data and technical resources nor the staffing to make such a specific determination about local costs on a large number of bills in a timely manner.

(Given their majority, representatives of local units have a potential veto over legislation unless their funding demands are met -- regardless of the views of the fiscal agencies and the executive branch. It potentially surrenders the legislative appropriations power to local government representatives.)
  - As mentioned earlier, the Mandate Panel will be tasked with reviewing all existing statutes and regulations imposing requirements on local government to see if they are "necessary" and to recommend ways of providing local government services on a more cost-effective basis. This also will require information and staffing not currently available.
  - In addition to these tasks, the Panel is to develop "a process for monitoring compliance" with the constitutional requirements regarding state mandates on local government and to make recommendations to address court decisions

that find the state has not met its local funding obligations. The magnitude of this task would require the creation of a full-time independent entity.

As you know, I also have concerns about the potential impact of the proposed Panel to effectively usurp the authority of the Legislature, and exert undue control the Legislative process. If, however, a decision is made to proceed, I strongly suggest that either the Chair of the standing committee on Judiciary, or the Chair of the standing committee on Appropriations be named as chair of the Panel.

Thank you for your consideration. I am available if you would like to discuss this matter further.